IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.260 OF 2006

Smt Shalini Raghunath Panchal & Ors. ...Appellants
Vs.
Municipal Corporation of
Greater Bombay & Anr. ...Respondents

Shri Nitin Mulye and Shri Girish Godbole for the Appellants.
Mr J.J. Xavier for the Respondent No.1.

CORAM : ABHAY S. OKA, J.

DATE : MAY 05, 2006.

JUDGMENT:

1. Heard the learned Advocates appearing for the parties. The First Appeal is preferred by the Plaintiffs. Suit for declaration and injunction filed by the Appellants-Plaintiffs has been dismissed by the impugned judgment and decree.

2. The original Plaintiff claims to be an occupant of land admeasuring 44ft 8" X 32 ft. and a structure standing thereon made up of C.I. Sheets and wooden planks admeasuring 44ft 8" X 32 ft. situated at Bhandup, Bombay. The Respondent No.1-Corporation served notice dated 20th November, 1986 to the original Plaintiff under section 351 of the Bombay Municipal Corporation Act, 1988 (hereinafter referred to as the said Act) alleging that the suit structure

has been erected without obtaining prior permission. The said notice was replied by the original Plaintiff by contending that the suit structure is regularised by the Respondent No.1-Corporation and the structure has been assessed to Municipal Taxes. In the suit filed by the Appellants a declaration was claimed that consequential notice issued under section 488 of the said Act on 09th January, 1987 was bad in law. By amending the plaint a declaration was claimed that order passed by the Deputy Municipal Commissioner on 18th September, 1987 on the basis of the notice dated 20th November, 1986 was bad in law. One of the contentions raised by the Appellants was that the suit structure was situated in a slum area and therefore is required to be protected as per the policy of the Respondent No.2- State Government. The learned Trial Judge held that the Appellants have failed to prove that the structure was authorised or that same was protected by the policy of the State Government.

3. Shri Godbole appearing for the Appellants submitted that the learned Trial Judge was more impressed by the history of interim orders passed in the suit rather than the merits of the case. He submitted that the Respondent No.2-State Government has not filed any written statement and therefore, the

learned Judge ought to have held that structure was protected by the policy of the State Government. He submitted that circular dated 29th October, 1986 clearly shows that the structure of the Appellant being in existence prior to 1976 was protected by the policy of the State Government. Shri Xavier appearing for the Respondent No.1 supported the impugned judgment and decree.

4. I have considered the submissions. During the pendency of the suit, the suit structure was demolished. The same was reconstructed under an interim order. Therefore, the Trial Court has discussed in detail the orders passed at interim stage. In the affidavit of examination-in-chief filed by the Appellant No.2 he has stated that the original Plaintiff was residing in the suit structure from the year 1966 and was doing business from the year 1978 in the suit structure. The Appellant No.2 relied upon assessment bills in respect of the suit structure issued in the year 1982. In the examination-in-chief he relied upon the circular dated 29th October, 1986.

5. The case of the Appellants is not that the structure was constructed after obtaining permission of the competent authority. Admittedly, the suit

structure is situated on a government land. Whether the structure was in existence before the datum line fixed by the Respondent No.1-Corporation for protection of unauthorised structures does not arise for consideration as in affidavit of examination-in-chief no case is made out that the structure was in existence either prior to 01st April, 1962 or 17th April, 1964. In fact in the Affidavit of examination-in-chief it is stated that the original Plaintiff is residing in the suit structure from the year 1966. Therefore, the suit structure is not protected by any of the policies of the Respondent No.1.

6. The only question which survives for consideration is whether the structure is protected by the 1986 circular relied upon by the Appellants. On plain reading of the circular it is apparent that the State Government has protected only censused structures which were censused in 1976. No evidence is produced by the Appellants to show that the suit structure was censused in the year 1976 or that the suit structure is a censused structure. No evidence is produced on record to show that the suit structure is situated in a slum area which is declared as a slum under section 4 of the Maharashtra Slum Areas

(Improvement, Clearance and Re-development) Act, 1971. In any event no evidence is produced by the Appellants to show that their names or name of the original Plaintiff appeared in the voter's list in respect of the suit structure as on 01st January, 1995. Thus, it is crystal clear that the suit structure is unauthorised and the same cannot be tolerated. Hence, there is no merit in the Appeal and the same is dismissed with no orders as to costs.

7. At this stage the learned Advocate for the Appellant prays that status-quo may be directed to be maintained for a reasonable period. The Advocate for the Respondents objects the said prayer.

8. Considering the facts and circumstances of the case, parties are directed to maintain status-quo as of today for a period of six weeks from today.

JUDGE